

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  OFFICE OF CONSUMER ADVOCATE,  Complainant,  vs.  UKI COMMUNICATIONS, INC.,  Respondent.	DOCKET NOS. FCU-02-27 FCU-03-23 FCU-03-41
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**ORDER CONSOLIDATING DOCKETS, CANCELLING THE HEARING,  
AND GRANTING EXTENSION**

(Issued March 18, 2004)

Docket Numbers FCU-02-27, FCU-03-23, and FCU-03-41, each began with a customer filing a complaint with the Utilities Board (Board) alleging that his or her telephone service had been switched to UKI Communications, Inc. (UKI), without his or her authorization. Each case went through the Board's informal complaint resolution process. In each case, after the conclusion of the informal complaint process, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) petitioned the Board to commence an administrative proceeding to impose a civil penalty for a slamming violation pursuant to Iowa Code § 476.103 (2003). In FCU-02-27, on January 21, 2003, UKI filed a response to the Consumer Advocate's petition and a motion to dismiss the petition, in which it argued the Consumer

Advocate's petition was not authorized by Iowa law and imposition of a civil penalty would be inappropriate as a factual matter. In FCU-03-23 and FCU-03-41, UKI did not file a response to the Consumer Advocate's petition. In each of the three cases, the Board issued orders finding sufficient information to warrant further investigation, docketing the proceeding, and assigning the proceeding to the undersigned administrative law judge.

On February 3, 2004, UKI filed a letter with the Board that stated it would be discontinuing intrastate toll service for all of its commercial and residential customers located in Iowa. UKI stated in the letter that all of its retail customers for in-state long distance interexchange services, including 1+, toll free, dial around, casual, and travel card services, would be affected. UKI further stated its customers had been informed that they needed to choose another long distance provider to be able to make long distance calls. In the letter, UKI stated it was requesting cancellation of the Certificate of Authority to transact business in the state of Iowa as of January 27, 2004. The letter was not signed, although it appeared to be on UKI letterhead and "UKI Communications Inc." was printed as the sender of the letter. The letter did not respond to the allegations in the petitions for civil penalty filed by the Consumer Advocate.

In FCU-02-27, the undersigned issued an order on February 4, 2004, that established a procedural schedule and set March 23, 2004, as the date for the hearing in the case. The parties were ordered to file a stipulation on or before

February 17, 2004, and UKI was ordered to file prepared testimony and exhibits and a prehearing brief on or before March 9, 2004. On February 10, 2004, Mr. Richard Lozier, attorney, filed a letter stating he had entered his withdrawal of appearance in this proceeding and had not been engaged by UKI to represent them with respect to ongoing proceedings in the case. On February 10, 2004, the undersigned sent a letter to UKI informing UKI of Mr. Lozier's communication and telling UKI it must comply with the requirements in the order, including the requirement to file an appearance. The Board served UKI with the procedural order and notice of hearing with the letter. On February 17, 2004, the Consumer Advocate filed a second supplemental status report stating it could not file a stipulation as required because UKI was not responding to the Consumer Advocate. The Consumer Advocate detailed the efforts it had made to contact UKI and its attorneys. The Consumer Advocate stated that, in addition to the withdrawal of representation by attorney Mr. Lozier, former UKI counsel Mr. Gregory Kunkel of Washington, D.C. stated he no longer represents UKI. On February 24, 2004, the Consumer Advocate filed prepared testimony, a prehearing brief, and an application for entry of judgment by default. On March 16, 2004, the Consumer Advocate filed a request to cancel the hearing. To date, UKI has not filed an appearance, prefiled testimony, a prehearing brief, or any response to the filings of the Consumer Advocate. The only response UKI filed is the letter dated February 3, 2004.

On January 20, 2004, in FCU-03-23, the Board issued an order docketing the proceeding and ordering UKI to file a response to the Consumer Advocate's petition on or before February 16, 2004. UKI filed the letter discussed above on February 3, 2004. On March 1, 2004, the Consumer Advocate filed an application for entry of judgment by default. On March 5, 2004, the Board issued an order that assigned the case to the undersigned and stated UKI had not responded to the petition. In the order, the Board noted UKI had filed the February 3, 2004, letter that stated it would be discontinuing intrastate toll service as discussed above. The Board stated "While it is apparent that UKI is no longer providing intrastate toll service in Iowa . . . , it remains unclear as to what services UKI continues to offer in other states and what effect a default judgment would have." The Board therefore requested the Consumer Advocate to file a statement describing the anticipated effect of a default judgment in the matter within ten days of the order. On March 12, 2004, the Consumer Advocate filed a request for an additional ten days to file the statement. To date, the only response UKI has filed is the letter dated February 3, 2004.

On January 20, 2004, in FCU-03-41, the Board issued an order docketing the proceeding and requesting UKI to file a response to the Consumer Advocate's petition on or before February 23, 2004. On February 3, 2004, UKI filed the letter discussed above. On March 5, 2004, the Board issued an order assigning the case to the undersigned. In the order, the Board noted UKI had filed the February 3, 2004, letter that stated it would be discontinuing intrastate toll service and that it had

informed its customers to choose another provider. On March 8, 2004, the Consumer Advocate filed an application for entry of judgment by default. To date, the only response UKI has filed is the letter dated February 3, 2004.

These three cases involve common parties and common questions of law. Although the facts in each case differ, all cases involve allegations of slamming. It does not appear that consolidation of these cases would adversely affect the substantial rights of any party. Consolidation would provide for more efficient administration of the cases. Therefore, the cases should be consolidated.

The statutes and rules involved in each case include Iowa Code §§ 476.3 and 476.103 and Board rules at 199 1.8, 22.23, and Chapters 6 and 7<sup>1</sup>. Iowa Code § 476.103(4)(a) provides that a service provider who violates a provision of the slamming statute, a rule adopted pursuant to the statute, or an order lawfully issued by the Board<sup>2</sup> pursuant to the statute, is subject to a civil penalty of not more than \$10,000 per violation, which, after notice and opportunity for hearing, may be levied by the Board. Each violation is a separate offense. Iowa Code § 476.103(4)(b) provides that, in determining the amount of the penalty, the Board may consider the factors listed in the statute. Iowa Code § 476.103(5) provides that, if the Board determines, after notice and opportunity for hearing, that a service provider has shown a pattern of violations of the rules adopted pursuant to the

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<sup>1</sup> Links to the Iowa Code and the Board's administrative rules (in the Iowa Administrative Code (IAC)) are contained on the Board's website at [www.state.ia.us/iub](http://www.state.ia.us/iub).

<sup>2</sup> In this case, the term "Board" includes the Board itself and the undersigned administrative law judge.

slamming statute, the Board may, by order, among other things, prohibit any other service provider from billing charges to residents of Iowa on behalf of the violating service provider and prohibit certificated local exchange service providers from providing exchange access services to the violating service provider.

**IT IS THEREFORE ORDERED:**

1. Docket Nos. FCU-02-27, FCU-03-23, and FCU-03-41 are hereby consolidated. All further filings must include all three docket numbers in the caption.
2. On or before March 31, 2004, UKI must file an appearance identifying one person upon whom the Board may serve all orders, correspondence, or other documents. The written appearance must substantially comply with 199 IAC 2.2(15). The appearance must include the docket numbers of this case as stated in the caption above. The appearance must be filed with the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The appearance must be accompanied by a certificate of service that conforms to 199 IAC 2.2 and verifies that a copy of the document was served upon the Consumer Advocate.
3. The hearing currently scheduled in Docket No. FCU-02-27 for Tuesday, March 23, 2004, is hereby cancelled.
4. The request for extension of time filed March 12, 2004, by the Consumer Advocate in Docket No. FCU-02-23 is hereby granted.

5. If UKI wishes to file a response to the applications for entry of judgment by default filed in each case by the Consumer Advocate, it must do so on or before March 31, 2004.

6. Rulings on the applications for entry of judgment by default filed in each docket by the Consumer Advocate are deferred pending further order.

7. A copy of this order will be delivered to the Consumer Advocate and sent by ordinary U.S. mail to all addresses in the Records and Information Center files for UKI and its former attorneys. In addition, a copy of this order will be sent via electronic mail to [juancamilo@ukicomunications.com](mailto:juancamilo@ukicomunications.com) and to [monica@ukicomunications.com](mailto:monica@ukicomunications.com).

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 18<sup>th</sup> day of March, 2004.